REMARKS

Status of the Claims

Claims 12-24, 27-30, 32-35, 37, and 39-41 are pending.

Claims 12, 20, and 33 are amended.

Applicant appreciates the Examiner's review of the application.

Rejection Under 35 U.S.C. §102 (b)

The Examiner has rejected claims 12-16 and 18 under 35 U.S.C. §102(b) based on the Koga reference. The independent claim 12 has been amended to further distinguish the claimed invention from the Koga reference. Applicant respectfully requests favorable reconsideration of the present applicant in view of this amendment, withdrawal of the rejection and allowance of claims 12-16 and 18.

With regard to the rejection under 35 U.S.C. §102, its is well settled, anticipation requires "identity of invention." *Glaverbel Societe Anonyme v. Northlake Manufacture Mktg. & Supply*, 33 USPQ2d 1496, 1498 (Fed. Cir. 1995). Each and every element recited in a claim must be found in a particular prior art reference and arranged as in the claims. *In re Marshall*, 198 USPQ 344, 346 (CCPA 1978); Lindemann Maschinenfabrik GMBH, see American Hoist and Derrick Company, 221 USPQ481, 485 (Fed. Cir. 1984). Furthermore, in a rejection under 35 U.S.C. §102 (b) there must be no difference between what is claimed and what is disclosed in the applied reference. *In re Kalm,* 154 USPQ10, 12 (CCPA 1967); Scripps v. Genentech Inc., 18 USPQ2d 1001,1010 (Fed. Cir. 1991).

The Koga reference shows a device which includes a tube (7) which extends downwardly into the tank to allow a pump 1 pump water from a lower portion of the tank. The Koga reference also shows a bubble prevention plate (11) which includes bores (11A) which provide "free passages" for the hot water, as shown in figure 15 (See column 10, lines 26-29). The

bubble prevention plate (11) is provided in the tank (2) to prevent bubbles in the boiling water from being sucked into the tube (7) (See column 5, lines 53-55).

As shown in figure 15, the bubble prevention plate (11) is shown in cross section, further showing the tube (7), the tank wall (2) and the bores (11A) or free passages. Figure 15 refers to tank **reference number 2**. Figure 15 does not show an illustration of **tank 2A**.

The applicant of the Koga reference appears to be knowledgeable about referring to alternate embodiments and has done so in reference to the distinction between figures 1 and 2 (See Column 4, lines 59-64). A similar distinction is not provided with regard to figures 12-15. Simply, figure 15 is referred to as "a transverse cross section of the portion having a bubble-prevention panel." (See column 5, lines 25-26).

Figures 1, 2 and 12-14 are all referred to as "schematic" views of the hot-water tank. In contrast, figure 15 is referred to as "transverse cross section" providing more specificity rather than just a "schematic". Applicant provides the foregoing description of the Koga reference to help illuminate this reference for purposes of this response. The specification and drawings of the Koga reference do not show each and every element recited in the claims.

Claims 12, 20 and 33, as amended, provides a baffle structure with a continuous wall, not one with holes in it. Further, the mouth is the only access through which water is received into the cavity. Additionally, the flow of water from the chamber, to the cavity, and out the outlet port is by force of gravity and not a pump. These limitations in claims 12, and claims 20 and 32 further distinguish the claimed invention from the Koga reference.

In contrast, Koga includes (11A) to provide "free passages for the hot water" (See figure 15). This is not a continuous wall since it has holes or bores in it. These bores providing free passage prevent water from being required to flow over the top edge of baffle structure to flow from the chamber, generally, into the cavity prior to dispensing. The purpose of the plate 11 is merely to provide a buffer to prevent bubbles from the boiling water from passing into the siphon

tube (7). As such, the mouth of Koga is not the only access to the cavity. Further, Koga requires a pump to lift the liquid instead of operating by gravity.

In contrast, the claimed invention as set forth in claim 12 requires the baffle structure as set forth therein to facilitate use of the hottest water which rises to the upper portion of the chamber. Furthermore, the outlet port extends through the housing and communicates directly with the lower portion of the cavity extends through the housing approximate to and communicates directly with the lower portion of the cavity to facilitate flow of the heated water from the upper portion of the chamber into the cavity defined by the baffle.

In contrast to the Examiner's assertions in the Office action, the bores 11A are not shown in the baffle in a separate embodiment which includes a different housing 2A. Clearly, figure 15 refers to reference number "2" and not 2A. Figures 1, 2, 13, and 14 all show operation of the system with the water level below the upper edge of the wall. Clearly, the only way in which the system would work under these conditions would be to include the bores 11A in the bubble for prevention plate 11 as shown in figure 15. Inclusion of these bores naturally results in the passage of water from a much lower level of the tank. Suctioning of water through the suction tube from a lower level of the tank results in cooler water being used in the process.

In contrast, the requirements of the claimed invention results in hot water from the upper most portion of the tank spilling into the cavity defined by the baffle and being dispensed at a lower portion of the cavity directly through the tank wall proximate to the lower portion of the cavity. Furthermore, assuming, arguendo, that there is another embodiment of the tank (2A) shown in figures 12-14, this alternate embodiment relates to the structure of the other components and not to the bubble prevention plate and bores.

For the foregoing reasons, Applicant respectfully asserts that the amended claim 12 overcomes and is allowable over the rejection under 35 U.S.C. §102. Applicant respectfully requests that the Examiner withdrawal the rejection and allow independent claim 12 and claims 13-16 and 18 depending there from.

Rejection Under 35 U.S.C. §103 (a)

With regard to the Examiner's rejection under 35 U.S.C. §103(a), the three various rejections of the claims are primarily dependent on Koga as the primary reference. As such, if the Koga reference fails the remaining references will not have any primary reference for support and combination. Logically, the failure of the Koga reference to provide the primary support will result in failure of the other references to provide any additional support. The Examiner has rejected claims 17, 19-24, 27, 28 and 30 under 35 U.S.C. §103 based on the combination of Koga and Knepler. The Examiner has rejected claims 33-35, 37, 39, 41 and 32 based on Koga in combination with Knepler and Patel. The Examiner also rejected claims 29 and 40 under 35 U.S.C. §103 based on the combination of Koga, Knepler and Beaulieu. Applicant will address these rejections and claims as a group since the primary discussion relates to the failure of the Koga reference to provide the primary support for these rejections.

Applicant refers to the arguments set forth relating to the deficiencies of the Koga reference above with regard to the rejection under 35 U.S.C. §102. While applicant is not arguing the same legal basis for the failure of the rejection under 35 U.S.C. §102, Applicant believes that all of the structural, functional, and technical discussion relating to the deficiencies of the Koga reference apply to the rejection under 35 U.S.C. §103.

Applicant reasserts the arguments with regard to Koga provided above.

Further, with regard to the rejections under 35 U.S.C. §103 (a), it is respectfully submitted that applicants claims are patentable, as the Examiner has failed to establish a *prima facie* case of obviousness. According to section 706.02 (j) of the MPEP the Examiner must meet three basic criteria to establish a *prima facie* case of obviousness:

(1) first, there must be some reasonable suggestion or motivation in the prior art to modify the reference or to combine the reference teachings;

(2) second, there must be reasonable expectation of success in obtaining the claimed invention based upon the references relied upon the Examiner; and

(3) third, the prior art reference (or references when combined) must teach or suggest all of the claimed limitations.

MPEP Section 706.02(j) further requires that the teaching or suggestion to make the modification or reference combination and the expectation of success, must be found in the prior art, and may not be based upon the applicants disclosure.

None of the other references make up for the deficiencies in Koga, either alone or in combination. None of the references have continuous walls defining a cavity in the housing. None of the references provide a mouth on the top edge of the wall to provide the only access into the cavity.

As noted above, Koga does not provide a suggestion or motivation to combine with Knepler, Patel or Beaulieu (as asserted by the Examiner) to modify Koga to achieve the claimed invention. Rather, if the Koga reference is applied and combined with the other references this would logically result in a baffle structure with holes, including a pump and having multiple accesses to the cavity. Clearly, based on the limitations set forth in independent claims 20 and 33 this would not achieve the intended purpose of the claimed invention. Alternatively, application of Koga to reject the claims in the present application under 35 U.S.C. §103 would require sealing of the bores 11A as taught in Koga. This would prevent the Koga reference from performing its intended purpose as shown in figures 1, 2, 13 and 14. This would be in contrast to the intended purpose of Koga. If the application is in contrast to the teachings of Koga, it clearly cannot provide a reasonable suggestion or motivation to combine with other references to achieve the claimed invention.

Second, there is not reasonable expectation of success in obtaining claimed invention based on the references relied upon by the Examiner. As noted above, Koga teaches structures and functions in contrast to the claimed invention and therefore fails as a primary reference.

Finally, the prior art references, based primarily on Koga do not teach of suggest all the claimed limitations. Clearly, Koga nor Knepler, Patel or Beaulieu provide any teaching or suggestion to provide a baffle structure as set forth in the amended claims.

With the foregoing in mind, Applicant respectfully asserts that the Koga reference fails as a primary reference to support a rejection under 35 U.S.C. §103. Failure of the Koga reference results in failure of any additional rejection since there is no support for combination with the other cited references. The other references do not satisfy the missing limitations not found in Koga.

With the foregoing in mind, Applicant respectfully requests the Examiner to withdraw the rejections under 35 U.S.C. §103 based on Koga. Applicant respectfully requests allowance of independent claims 12, 20 and 33 as amended herein and claims 17, 19, 21-24, 27-30, 32, and 34, 35, 37,39-41, respectively.

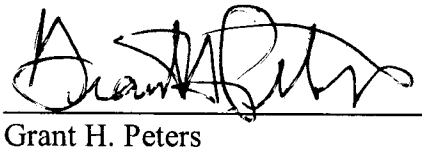
The amendments to the claims are fully supported by the specification and the drawings as originally filed and do not add any new matter. For the foregoing reasons, Applicant respectfully asserts that claims 12-24, 27-30, 32-35, 37, and 39-41 are in condition for allowance based on the amendments herein and as such, allowance is, respectfully requested. Favorable reconsideration of the claims as amended herein is respectfully requested.

If there is any issue remaining to be resolved, the Examiner is invited to contact the undersigned attorney by telephone so that resolution can be promptly effected.

Applicant herewith Petitions for a Three-Month Extension of Time. It is requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response with the fee for such extensions and any other fees or shortages in other fees, being charged, or any overpayment in such fees being credited, to the Deposit Account of Barnes & Thornburg LLP, Deposit Account No. 12-0913 acknowledging attorney docket no. (27726-97775).

Respectfully submitted,

BARNES & THORNBURG LLP



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